



Report to the Auburn City Council

Action Item

Agenda Item No. 10

City Manager Approval

To: Mayor and City Council Members
From: Bernie Schroeder, Director of Public Works
Date: October 28, 2013
Subject: Regional Sewer Common Pipeline Intent to Commit

The Issue

Shall the City provide the City of Lincoln and the Placer County Board of Supervisors (BOS), the City of Auburn's intent to participate with the Regional Sewer Common Pipeline Project?

Conclusion and Recommendation

The City Council will provide staff direction on how to proceed with the Regional Sewer Project.

Background

The Regional Sewer Project has progressed to the point of having a public bid for the construction project. The City has recently received additional correspondence from the City of Lincoln and Placer County regarding their schedule, intent to award, and Auburn's proposed share of costs for the common pipeline. That correspondence is attached to this report as Attachment A & B. Of particular importance is the County's request for Auburn's intent to participate by November 1, 2013.

In April 2013 the Council sent deal points for how the City could consider participating in the common pipeline. The premise of the deal points was that the City needed an understanding of how the regional system would be operated (governance structure, future cost methodology, operations and maintenance responsibilities, capacity purchased, etc.) prior to advancing funding of the common pipeline. In June 2013 the City received a response from the staff at the City of Lincoln and Placer County to the April 2013 letter from the Council (see Attachment D). Some of these deal points needed to be flushed out as part of the agreement that was recently approved by the Board of Supervisors (BOS) on October 8, 2013. This agreement is called the Construction, Operations, and Joint Exercise of Powers Agreement (COJA). A summary of the COJA between Lincoln and Placer County is attached to this report as Attachment C.

Staff has attempted to summarize the status of each of these deal points by annotating the original set of Council's items below. We believe the correspondence attached to this report is the only correspondence the City has received from the agencies related to Auburn's Deal Points and Auburn's Deal Points were not discussed by the BOS at the October 8th meeting. As a result, some items have Staff's opinion of how the deal point would be addressed based on the current COJA language.

Alternatives Available to Council; Implications of Alternatives

1. Notify Lincoln and Placer County the City's intent to purchase capacity in the Common Pipeline for \$3,021,306, on the mutual acceptance of the Deal Points previously submitted.
2. Notify Lincoln and Placer County the City's intent to purchase capacity in the Common Pipeline for \$3,021,306, on the mutual acceptance of a revised set of deal points that are discussed at tonight's council meeting.
3. Do not participate in the Regional Sewer Project. If the common pipeline is not upsized for Auburn, connecting to Lincoln in the future would likely be significantly more expensive in the future. Notify the City of Lincoln and Placer County that the City will not participate in this project.

Fiscal Impact

The Regional Sewer Project Common Section of Pipeline Project is estimated to cost \$3,021,306 based on the construction bids received. In addition, because the County is obligating Auburn to be responsible for any construction cost overruns associated with the common section of pipeline installation there should be a contingency included in the construction bid number. Based on County staff incorporating a 25% contingency to their portion of the project, staff is recommending that the estimated cost of the common section of pipeline be \$3,776,632. Funding for the Regional Sewer Project Common Section of Pipeline will require the City to complete a rate study, conduct a Proposition 218 hearing and raise sewer rates to fund the purchase. Although staff has not conducted a thorough financial analysis we believe the impact to the existing rate is approximately \$3.00 - \$4.00 per EDU per month plus the CPI adjustment currently in the rate model for a total estimated impact of \$4.00 - \$5.00 per EDU per month. If it is the direction of the Council to move forward with the purchase of capacity in the common line and/or following acceptance of the proposed Deal Points staff would suggest a Revenue Study be prepared to initiate the rate increase and Proposition 218 Hearings.

Additional Information

If Auburn were to move forward with connecting in the regional pipe in the future there would be a series of additional efforts and associated costs incurred at some point in the future, including:

- Engineering, environmental and construction costs of a pump station at the existing Auburn Wastewater Treatment Plant.
- Decommissioning costs to the Auburn Plant.
- Engineering, environmental and construction costs of a new trunk line connecting to the regional pipe.
- Buy in to connect to the Lincoln Facility including upgrades deemed necessary to provide capacity.

These facilities were previously estimated at \$36 million in current dollars.

Attachments:

Attachment A – Oct 4, 2013 Letter from City of Lincoln

Attachment B- Oct 4, 2013 Letter from Placer County

Attachment C- Summary of the COJA between Placer County and the City of Lincoln (from October 8th, 2013 BOS Staff Report).

Attachment D – June 24, 2013 Letter from City of Lincoln & Placer County

REGIONAL SEWER COMMON PIPELINE DRAFT DEAL **POINTS TO CONSIDER**

Agreement with Placer County

For Auburn, staff is proposing City Council consider these general provisions to be included in a model type agreement with Placer County for the construction of the Regional Sewer Common Pipeline Section.

1. Auburn's buy in for the common section of pipeline only is estimated at \$2.8 million but would be adjusted based on actual construction bids.

Status: The cost to Auburn for the common section is \$3,021,306 based on the construction bids received in September 2013. In addition, because the County is obligating that Auburn be responsible for construction cost overruns associated with the common pipe installation there should be a contingency in the above stated amount. County staff has indicated their costs include a 25% contingency. If Auburn were to include this same contingency the amount would be \$3,776,632.

2. Auburn would be presented an option to participate in the common pipeline prior to the award of the County related regional project (estimated to be in Sept 2013). This would be an understanding under an agreement with Placer County.

Status: See attached letter from Placer County dated October 4, 2013 requesting Auburn's commitment on Auburn's intent by November 1, 2013.

3. Auburn shall have the right to sell the capacity in the common section of pipeline in the future.

Status: Not included in the COJA.

4. Auburn would reimburse the County as the work is completed, not upfront. Conceivably over the 2 year construction period.

Status: While not specifically addressed in COJA for Auburn, the COJA describes reimbursements between the County and Lincoln as the work is completed. Staff believes a similar reimbursement schedule would be applied for Auburn.

5. Auburn will receive ownership of Auburn's share of the common pipeline. Auburn will have the capacity to direct peak flows of 5.2 mgd into the pipeline.

Status: Not included in the COJA

6. Any costs or changes in scope associated with the agreement would be approved by the Auburn City Council.

Status: Not included in the COJA

7. At the time of connection to the common pipe, Auburn would be charged a pro-rata share of the annual pipeline operations and maintenance (O&M) costs. Auburn's operations and maintenance costs shall be determined by some rational means reflecting Auburn's percentage of capacity the common pipeline as well as the relative pipe lengths between Placer County and Auburn.

Status: While not specifically addressed in COJA for Auburn, the COJA describes operations charges per equivalent dwelling unit (EDU) set at base rate which is annual adjusted based on the average percentage change in the total operations costs from comparable facilities. The annual O&M costs for Placer County in the COJA is \$24 / EDU which includes both treatment plant and pipeline O&M costs. These costs would be included in future rate increases at the time Auburn connects.

8. A mutually agreed upon JPA shall be formed within five years of the date the City of Auburn agrees to purchase capacity in the common pipe.

Status: the COJA describes an Oversight Committee consisting of two members of Party's Board or Council with certain major decisions requiring approval of both the BOS and City Council. While Auburn is not currently described in the COJA, we might expect the Oversight Committee to include two representatives from Auburn.

9. It is Auburn's understanding that Placer County has purchased wastewater capacity for 4.2 mgd of average dry weather flow and 14.7mgd of peak wet weather flow. These flows are pumped into the regional pipelines and City of Lincoln trunk sewers and wastewater treatment plant. Online flow measurement at the SMD1 Pump Station will be used to confirm these flows are not exceeded. Flows exceeding these Placer County flows would reduce Auburn's purchased capacity of 2.5 mgd (average) and 5.2 mgd (peak) into the pipelines. This would represent a violation of the proposed agreement.

Status: These values have remained unchanged in the COJA and design. The facilities will include online flow measurement.

Agreement with the City of Lincoln

For Auburn, staff is proposing City Council consider these general provisions to be included in a model type agreement with the City of Lincoln for the Regional Sewer Common Pipeline Section.

1. Auburn's owns capacity of 5.2mgd in the common section of pipeline.

Status: This value has remained unchanged in the COJA and design. The purchase price is \$3,021,306. In addition, because Auburn would be responsible for construction cost overruns associated with the common pipe installation there should be a contingency in the above stated amount. County staff has indicated their costs include

a 25% contingency. If Auburn were to include this same contingency the amount would be \$3,776,632.

2. Auburn reserves future capacity to send 5.2mgd peak hourly flows, 2.5mgd average dry weather sanitary sewer flows in all downstream wastewater facilities (sewers, treatment facilities, & effluent disposal facilities). The 2.5 mgd of sanitary flow represents about 10,500 EDUs and a wastestrength of about 6,000 lbs /d of biochemical oxygen demand (BOD).

Status: The COJA does not describe specific flows and load capacity from Auburn.

3. At the point in the future when Auburn and Lincoln mutually agree to connect, Auburn would be charged no more than the City of Lincoln's current resident connection fee for wastewater collection, treatment, and disposal. A joint connection fee study will be prepared to define Auburn's connection fee. This would also apply to any capacity sold by the City of Auburn.

Status: A connection fee study was completed for Placer County SMD 1 residents and is referenced in the COJA. The proposed fee is \$ 5,295 per EDU for regional facilities plus the costs for local facilities at SMD1 (local sewers, administration) for a total fee of \$ 9,733 per EDU. Auburn might expect a similar magnitude of connection fee in the future, adjusted for inflation.

4. Auburn can sell/ transfer this agreement to another agency with similar flows/quality.

Status: The COJA does not describe the selling or transferring of capacity to another agency.

5. A mutually agreed upon JPA shall be formed within five years of the date the City of Auburn agrees to purchase capacity in the common pipe.

Status: the COJA describes an Oversight Committee consisting of two members of Party's Board or Council with certain major decisions requiring approval of both the BOS and City Council. While Auburn is not currently described in the COJA, we might expect the Oversight Committee to include two representatives from Auburn.

6. At the time of connection to the common pipe, Auburn would be charged a pro-rata share of the annual pipeline O&M costs. Auburn's operations and maintenance costs shall be determined by some rational means reflecting Auburn's percentage of capacity the common pipeline as well as the relative pipe lengths between Placer County and Auburn.

Status: While not specifically addressed in COJA for Auburn, the COJA describes operations charges per equivalent dwelling unit (EDU) set at base rate which is annual adjusted based on the average percentage change in the total operations costs from comparable facilities.

October 4, 2013

Ms. Bernie Schroeder
Director of Public Works
City of Auburn
1225 Lincoln Way
Auburn, CA 95603

Mr. Bill Zimmerman, P.E.
County of Placer – Department of Facility Services
11478 C Avenue
Auburn, CA 95603

Subject: Regional Wastewater Sewer Project - Common Pipeline Upsizing

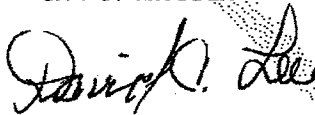
Dear Ms. Schroeder:

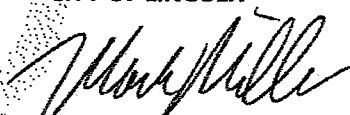
As you are aware, the Regional Program has moved forward and has received Construction Bids for all three elements of the Regional System. Within the Regional Pipeline Bid, the differential cost for upsizing the Common Pipeline Segment from the point of future connection by the City of Auburn to the junction of existing Gravity Sewer System was received and evaluated by Placer County with the cost for the City of Auburn to participate in future connections to the Regional System by investing in the upsizing of the Common Pipeline at this time. Construction Contracts have been reviewed and are projected to be awarded on November 19th by the Lincoln City Council. Prior to the award date on November 19th, the City must confirm to the Contractor the basis of award to include the Upsized Common Pipeline or not.

Please be advised that at this time, a response and confirmation from the County must be received by the City of Lincoln no later than November 1st, 2013 in order for the award for the Construction Contract to include the upsized Common Pipeline. The City of Auburn and the County of Placer have a proposed financial agreement which needs to be ratified in order for the County to provide Lincoln with authority to add the upsized construction cost to this Project. If a written directive is not received by the City of Lincoln from Placer County by November 1st, the Construction Contract will proceed with the reduced size Common Pipeline.

Sincerely,
CITY OF LINCOLN

CITY OF LINCOLN

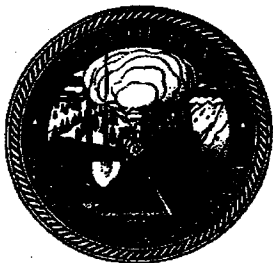

David C. Lee, P.E.
Project Manager


Mark Miller
Director of Public Services

DCL/rs

City Hall
600 Sixth Street
Lincoln, CA 95648
(916) 434-2400
www.ci.lincoln.ca.us

Administrative Services - City Manager's Office - Development Services
Fire - Library - Recreation - Police - Public Services



COUNTY OF PLACER

BOARD MEMBERS

JACK DURAN District 1	JIM HOLMES District 3
ROBERT M. WEYGANDT District 2	KIRK UHLER District 4
JENNIFER MONTGOMERY District 5	

OFFICE OF COUNTY EXECUTIVE

David Boesch, County Executive Officer

175 FULWEILER AVENUE / AUBURN, CALIFORNIA 95603
TELEPHONE: 530/889-4030
FAX: 530/889-4023
www.placer.ca.gov

October 4, 2013

Mr. Bob Richardson, City Manager
City of Auburn
1225 Lincoln Way
Auburn, CA 95603

RE: Auburn participation in the Mid-Western Placer Regional Sewer Project

Dear Mr. Richardson:

On October 8, 2013, the Board of Supervisors will consider approval of the Construction, Operations, and Joint Exercise of Powers Agreement with the City of Lincoln for the Mid-Western Placer Regional Sewer Project (Regional Project). Shortly following execution of the Agreement, Lincoln plans to award construction contracts for the Regional Project.

As you are aware, the County has funded the environmental review of improvements that will allow for Auburn's participation in the Regional Project, and has designed a portion of the Regional Project pipeline to be oversized to accommodate future flows from Auburn. Based on construction bid results, the cost to Auburn for this oversizing is \$3,021,306, including costs for the previously mentioned design and environmental work. This cost is subject to adjustment during construction due to differing site conditions or other changes that will be addressed through construction contract change orders.

In order to have the work included in the pipeline construction contract award, the County needs a commitment on Auburn's intent to fund construction of the pipeline oversizing no later than November 1, 2013. If you have any questions or concerns please feel free to contact Mary Dietrich, Director of Facility Services at (530) 886-4957.

Sincerely,

COUNTY OF PLACER

David Boesch
Placer County Executive Officer

CC: Placer County Board of Supervisors
Jim Estep, Lincoln City Manager

**MEMORANDUM
DEPARTMENT OF FACILITY SERVICES
COUNTY OF PLACER**

To: **BOARD OF SUPERVISORS**

Date: **OCTOBER 8, 2013**

From: **MARY DIETRICH / BILL ZIMMERMAN**

Subject: **MID-WESTERN PLACER REGIONAL SEWER PROJECT – CONSTRUCTION,
OPERATIONS AND JOINT EXERCISE OF POWERS AGREEMENT**

ACTION REQUESTED / RECOMMENDATION:

1. Adopt a Resolution approving the Construction, Operations and Joint Exercise of Powers Agreement (COJA) with the City of Lincoln (Lincoln) for the Mid-Western Placer Regional Sewer Project (Regional Project) for a Capital Charge of \$73,203,000, to be adjusted for inflation pursuant to the terms of the COJA, funded through Sewer Maintenance District 1 (SMD 1) fees at no net County cost.
2. Approve the First Amendment to the Design and Environmental Review Agreement (DERA) re-allocating \$481,350 of the Capital Charge into the DERA to fund easement acquisition costs with no increase to the Capital Charge and at no net County cost.
3. Approve a Budget Revision in the amount of \$40,000,000 to increase the FY 2013-14 SMD 1 Regional Sewer Capital Project Budget from \$9,511,944 to \$49,511,944, funded through a combination of SMD 1 reserves and a Clean Water State Revolving Fund (SRF) financing agreement repaid through SMD 1 fees at no net County cost.

BACKGROUND: On March 13, 2012, your Board directed staff to pursue Lincoln's offer (Lincoln Offer) to complete the Regional Project in order to bring the SMD 1 Wastewater Treatment Plant (Plant 1) into compliance with its regulatory permits. Subsequently, on August 7, 2012, your Board approved the DERA with Lincoln for the design, environmental review, regulatory permitting and easement acquisition for the Regional Project which includes decommissioning Plant 1 and constructing a pump station on the site, installation of approximately 13 miles of pipeline from Plant 1 to Lincoln, and construction of 1.7 million gallons per day of capacity at the Lincoln Wastewater Treatment Plant. Additionally, the DERA provides for a design option that would oversize a portion of the regional pipeline (Common Pipeline) to accommodate future wastewater flows from Auburn. Lincoln has completed the design and environmental work included in the DERA.

On April 12, 2012, your Board authorized the Director of Facility Services to file an SRF financial assistance application that would transfer financing obtained for the SMD1 Upgrade Project to the Regional Project. This financing includes a 30-year extended term loan at an estimated 1.9% interest with \$6 million in principal forgiveness. All of the environmental permitting needed to complete our financing application package has been submitted to the SRF. Approval of the executed COJA will allow the County to finalize the application package and secure the principal forgiveness.

Construction, Operations and Joint Exercise of Powers Agreement

On August 7, 2012, your Board approved Deal Points that along with the provisions of the Lincoln Offer would serve as the framework for negotiating an agreement providing for the construction and operation of the Regional Project. Over the past year, County and Lincoln staff negotiated the terms of the COJA consistent with that framework.

321

In summary, the COJA provides for the construction of the Regional Project for a Capital Charge of \$73,203,000. This amount includes a 2% inflationary budget and will be adjusted for actual inflation from the date of the Lincoln Offer, February 2012, to the scheduled midpoint of construction, July 2014. Staff estimates that this adjustment will add between \$1,500,000 and \$2,000,000 to the Capital Charge. Lincoln bid the Regional Project as three (3) separate construction contracts: the Regional Pipeline; the SMD 1 Pump Station; and the Lincoln Wastewater Treatment Plant Expansion. Bid openings held in late August and early September resulted in a combined construction bid cost of \$39,564,063. A Capital Contingency of \$9,850,249 is available for unanticipated project costs. In addition, the Capital Charge includes a \$7,070,338 payment to Lincoln for oversizing in their collection system that Lincoln has pledged back to the Project as additional contingency. At the end of construction, any remaining Capital Charge, up to a cap of \$17,806,800 (\$2,200 per existing EDU), will be paid to Lincoln as an Oversizing Payment. Cost overruns exceeding the Capital Charge will be borne by the County and SMD 1. A breakdown of the Capital Charge based on the construction bid amounts is included as Attachment A.

Under the terms of the COJA, Lincoln will provide treatment for wastewater from SMD 1 as well as operation and maintenance of the SMD 1 Pump Station and Regional Pipeline for a 2011 base year cost of \$24/month/Equivalent Dwelling Unit (EDU) that will be adjusted annually to reflect changes in operational costs. The COJA includes funding obligations for repair and rehabilitation (R&R) projects, including Lincoln's obligation to fund the R&R obligation for operation of their treatment plant from its opening in 2004 to completion of the Regional Project in 2015. The current monthly maintenance and operation fee in SMD 1 of \$95.78/EDU provides adequate funding for the operations charge and the County's R&R obligation. In addition, The COJA includes a connection fee analysis that estimates the regional component for new connections at \$5,295/EDU. This equates to an estimated total Connection Fee of \$9,733/EDU including a local component retained for use by SMD1. The current SMD 1 Connection Fee is \$8,057/EDU. Staff will return to your Board with a proposed Connection Fee adjustment later this year.

The Lincoln City Council is scheduled to consider the COJA on the morning of October 8, 2013. Assuming the Council approves the COJA, your Board's approval of the COJA will complete the approval process and allow staff to finalize the SRF application package. An Executive Summary of the COJA, including details on the construction, operations, risk management / dispute resolution, and governance provisions is included as Attachment B. Full copies of the COJA have been provided individually to your Board and are available for review at the Clerk of the Board.

Auburn Participation

Construction bids for the Regional Pipeline included an option to oversize the Common Pipeline to accommodate wastewater flows from Auburn. Using the bid results as a basis, the incremental cost for construction of the oversizing is \$2,091,100. County staff provided Auburn with a pro rata cost of \$3,021,306 to participate in the oversize the pipeline. In addition to Auburn's proportional share of the pipeline construction, this cost includes pavement restoration, construction management and repayment of the \$203,000 previously funded by the County for DERA environmental and design work performed to maintain Auburn's ability to participate in the Regional Project.

First DERA Amendment

As stated above, the DERA provides for the design, environmental review, regulatory permitting and easement acquisition for the Regional Project. The original pipeline alignment was primarily within County roadway rights of way. Through the course of design, portions of the pipeline were

realigned to a more efficient cross-country route. The cost of easements for the cross-country alignment is included in the Capital Charge, but was not included in the DERA budget. The First Amendment re-allocates \$481,350 of the Capital Charge into the DERA to fund easement acquisitions. The First Amendment does not increase the Capital Charge.

ENVIRONMENTAL CLEARANCE: On May 28, 2013, the Lincoln City Council, as Lead Agency, certified the EIR and adopted the MMRP for the Regional Project. The NOD was filed on May 29, 2013. On August 20, 2013, your Board, as a Responsible Agency, approved the EIR and MMRP, for use on the Regional Project.

FISCAL IMPACT: The Capital Charge of the COJA is \$73,203,000 that will be adjusted for inflation to July 2014. Approval of the attached Budget Revision will increase the FY 2013-14 SMD 1 Regional Sewer Capital Project Budget by \$40,000,000 from \$9,511,944 to \$49,511,944. This increase is funded through a combination of SMD 1 reserves (\$1,000,000) and a Clean Water State Revolving Fund (SRF) financing agreement repaid through SMD 1 fees (\$39,000,000). The current monthly maintenance and operation fee in SMD 1 of \$95.78/EDU provides adequate revenue for loan repayment. Approval of the COJA and the Budget Revision will result in no net County cost.

MD:BZ:LM

CC: COUNTY EXECUTIVE OFFICE
TREASURER/TAX COLLECTOR

ATTACHMENT: RESOLUTION
FIRST DERA AMENDMENT
BUDGET REVISION
ATTACHMENT A – CAPITAL CHARGE BREAKDOWN
ATTACHMENT B – COJA EXECUTIVE SUMMARY

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Before the Board of Supervisors County of Placer, State of California

In the matter of: A RESOLUTION APPROVING
AND AUTHORIZING THE CHAIR OF THE
BOARD OF SUPERVISORS TO EXECUTE
THE CONSTRUCTION, OPERATIONS AND
JOINT EXERCISE OF POWERS
AGREEMENT IN THE AMOUNT OF
\$73,203,000, AND AUTHORIZING THE
COUNTY'S AUTHORIZED
REPRESENTATIVE TO TAKE SUCH OTHER
ACTIONS AS MAY BE REASONABLE,
APPROPRIATE AND/OR NECESSARY FOR
THE MID-WESTERN PLACER REGIONAL
SEWER PROJECT.

Resolution _____

The following RESOLUTION was duly passed by the Board of Supervisors of the
County of Placer at a regular meeting held _____, by the
following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Chair, Board of Supervisors

Attest:

Clerk of said Board

WHEREAS, the City of Lincoln (Lincoln) and the County of Placer (County) have determined that the Mid-Western Placer Regional Sewer Project (Regional Project), as described in the Construction, Operations and Joint Exercise of Powers Agreement (COJA) presented to the Placer County Board of Supervisors on October 8, 2013, is in the public interest, and

WHEREAS, the County and City previously entered the "Design and Environmental Review Agreement" dated as of August 14, 2012, as amended to date ("DERA"), whereby County and Lincoln have been working cooperatively to plan, design, acquire real property interests and necessary permits, and prepare for the construction of a regional wastewater collection, conveyance and treatment facilities to serve the County's Sewer Maintenance District 1 sewer service area, and

WHEREAS, the COJA addresses the Parties' responsibilities with regard to construction, payment, operations, connection fees, claiming unused capacity, reclaimed water, among other things, and provides a process for the Parties to address long-term governance of the Regional Project, and

WHEREAS, California Government Code Section 6500 et seq. provides authority for the County and Lincoln to enter into an agreement providing for the joint exercise of their statutory powers, and

WHEREAS, the Parties have now completed the design of the Regional Project, obtained approval of the Regional Project pursuant to the California Environmental Quality Act (CEQA), obtained sufficient real property interests to allow construction of the Regional Project to begin, and obtained bids for the construction of the Regional Project, and

WHEREAS, the COJA anticipates various County actions during its term and will require an Authorized Representative to carry out and implement the County rights and obligations under the agreement, and

WHEREAS, the Regional Project may require the acceptance of, or other actions associated with, certain infrastructure and property interests, including infrastructure and/or property interests associated with the Bickford Ranch development project, and

WHEREAS, the total Capital Charge for the Regional Project is \$73,203,000, to be adjusted for inflation to July 2014 pursuant to the terms of the COJA.

NOW THEREFORE BE IT HEREBY RESOLVED by the Board of Supervisors, County of Placer, State of California, that this Board approves and authorizes the Chair to execute the Construction, Operation and Joint Exercise of Power Agreement for the Mid-Western Placer Regional Sewer Project, and

BE IT FURTHER RESOLVED that the County's Director of Facility Services is hereby confirmed as the County's Authorized Representative for the Regional Project and is authorized to take all such actions as may be reasonable, appropriate and/or necessary pursuant to the COJA or otherwise in furtherance of the Regional Project, and

BE IT FURTHER RESOLVED, that the County's Director of Facility Services is hereby authorized to take such actions as may be reasonable, appropriate and/or necessary to accept, or otherwise act on the County's behalf, regarding infrastructure and/or property interests associated with the Regional Project, including, without limitation, infrastructure and/or property interests associated with the Bickford Ranch development project.

325

**FIRST AMENDMENT TO
DESIGN AND ENVIRONMENTAL REVIEW AGREEMENT
RELATING TO
THE MID-WESTERN PLACER REGIONAL SEWER PROJECT**

This First Amendment to the Design and Environmental Review Agreement Relating to the Mid-Western Placer Regional Sewer Project is entered as of the _____ day of _____, 2013, by and among and the COUNTY OF PLACER, a political subdivision of the State of California ("County") and the CITY OF LINCOLN, a city duly organized and existing under the laws of the State of California ("Lincoln").

Recitals

Whereas, Lincoln and the County wish to work cooperatively to plan, design, permit, finance, construct and operate the Mid-Western Placer County Regional Sewer Project ("Project"); and

Whereas, the Project will consolidate the treatment of wastewater from Lincoln and the County's North-Auburn Sewer Maintenance District 1 at the Lincoln Wastewater and Treatment Reclamation Facility; and

Whereas, Lincoln and the County executed the Design and Environmental Review Agreement (DERA) for the Project on August 20, 2012, which delineated the duties, rights and obligations of each party for design, environmental review, right of way and/or property acquisition, financing, water rights and all other related items for the Project; and

Whereas, the DERA provided the County would pay Six Million Sixty Seven Thousand Dollars (\$6,067,000 ("DERA Costs")) during the design, environmental review, permitting and land easement/acquisition period for those activities;

Whereas, the at the time of entry into the DERA the easement acquisition costs were unknown, and

Whereas, Lincoln has now finalized the easement acquisition costs in the amount of Four Hundred Eighty One Thousand Three Hundred and Fifty Dollars (\$481,350), and

Whereas, the DERA provides that DERA Costs can be amended by both parties; and

Whereas, the County has agreed to increase the DERA Costs by \$481,350 for a total DERA Cost of Six Million Five Hundred Forty Eight Thousand Three Hundred Fifty Dollars (\$6,548,350); and

Whereas, the Parties agree the DERA Cost shall be credited against the County's Portion of the Project such that the County's Portion of the Project shall remain approximately Seventy Three Million Two Hundred Three Thousand Dollars (\$73,203,000), as adjusted, and

Whereas, the potential environmental impacts of the Project were studied in the Environmental Impact Report certified on May 28, 2013 and none of the circumstances set forth in Public Resources Code section 21166 or CEQA Guidelines section 15162 is present requiring further environmental review.

NOW THEREFORE, the Parties hereto agree as follows:

1. Paragraph 1 of the DERA shall be amended as follows:

"DERA Costs means the not to exceed amount of ~~Six Million Sixty Seven Thousand Dollars (\$6,067,000)~~ Six Million Five Hundred Forty Eight Thousand Three Hundred Fifty Dollars (\$6,548,350) the County will pay to Lincoln to provide permitting, design, environmental review, and negotiation of right of way and/or property acquisition and project management for the Lincoln-County Project as set forth under this Agreement."

2. DERA Exhibit B shall be amended as follows:

Lincoln Offer Design & Environmental Cost:	\$5,580,000
Lincoln Revision to Design and & Environmental Cost:	\$284,000
<u>Acquisition of Right-of-Way:</u>	<u>\$481,350</u>
CEQA for Auburn Portion:	\$153,000
Design Joint Export Sewer for Auburn as bid alternative:	\$50,000
Total:	\$6,067,000 \$6,548,350

3. All portions of the DERA not amended by this First Amendment to Design and Environmental Review Agreement Relating to the Mid-Western Placer Regional Sewer Project remain in effect.

IN WITNESS WHEREOF, the parties have each caused their duly authorized officers to execute this Agreement effective as of the date first written above.

COUNTY OF PLACER

BY: _____
Chair, Board of Supervisors

APPROVED AS TO FORM:

BY: _____
County Counsel

ATTEST:

BY: _____
Clerk, Board of Supervisors

CITY OF LINCOLN

BY: _____
City Manager

ATTEST:

BY: _____
City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney

CAPITAL CHARGE BREAKDOWN BASED ON CONSTRUCTION BIDS

CONSTRUCTION COSTS

CONSTRUCTION	39,564,063
INFLATION ALLOWANCE (2%)	1,020,000
CAPITAL CONTINGENCY	<u>9,850,249</u>
SUBTOTAL - CONSTRUCTION COSTS	50,434,312
DESIGN/ENVIRONMENTAL/CONST. MGMT.	15,698,350
OVERSIZING CONTINGENCY	<u>7,070,338</u>
CAPITAL CHARGE	73,203,000

**Executive Summary of
Construction, Operations and Joint Exercise of Powers Agreement**

This executive summary provides a high-level summary of the most significant aspects of the proposed Construction, Operations and Joint Exercise of Powers Agreement (COJA), but see the attached draft COJA for detailed contractual language and the defined terms used here.

1. **Background.** In February 2012, Lincoln made an updated offer to Placer County to construct and operate a project that would treat SMD 1 customers' wastewater at the Lincoln treatment facility, and the Board directed County staff to pursue the offer in March 2012. In August 2012, the Parties executed the DERA, which provided for Lincoln's design, environmental review, permitting, and land/easement acquisition for the Project. The COJA is the follow-on agreement that provides for the construction and operations of the Project.
2. **Financing.** The County will enter a financing agreement with the State Water Board under its Clean Water State Revolving Fund (SRF) program, with a 30 year repayment, estimated 1.9% interest, and \$6M in principal forgiveness. The loan application requires the executed COJA and Lincoln having secured all necessary permits.
3. **County's Financial Obligations – Construction Phase**
 - a. **Capital Costs.** The COJA enumerates the categories of Lincoln's construction phase costs for which County will be responsible, including: (1) design, environmental review, permitting, easement/land acquisition; (2) construction; (3) construction management; and (4) Allowable Staff Costs. County must pay all undisputed Capital Costs per the COJA's terms, even if they exceed the Capital Charge.
 - b. **Capital Charge.** The COJA provides for a metric called the Capital Charge against which the aggregate Capital Costs are measured at Project Final Completion to determine whether and how much Oversizing Payment is generated. The Capital Charge may be adjusted for County design changes, County-responsible delays, certain County damages not paid by Lincoln, and, to a limited extent, Differing Site Conditions.
 - c. **Capital Contingency/Oversizing Contingency.** The Capital Contingency is to address unanticipated costs, including Differing Site Conditions. If the Capital Contingency is used up, then the Oversizing Contingency (equal to the amount originally estimated in the Capital Charge for the Oversizing Payment) is used. Neither contingency is available to pay for County Changes.
 - d. **Oversizing Payment.** An Oversizing Payment is generated to the extent the aggregate Capital Costs are less than the Capital Charge at Project Final Completion. If sufficiently large, the Oversizing Payment will be limited per COJA terms.
 - e. **Paying Agent Provisions.** Per COJA terms, the County Treasurer will act as the Paying Agent to make payments on behalf of Lincoln to Lincoln's designers, CM, contractors, and other payees, as well as to pay Lincoln for certain Allowable Staff Costs.

4. County's Financial Obligations – Operations Phase

- a. **Operations Charge.** During the Operations Period, County will pay the Operations Charge to Lincoln quarterly for treating the SMD 1 wastewater. The charge is set at a 2011 base year at a base cost of \$24/month/EDU, and is annually adjusted based on the average percentage change in the total operations costs of a basket of comparable facilities. Also, for 10 years County will reimburse the cost of a specified amount of replacement water to Rock Creek.
- b. **Funding Repair & Rehabilitation (R&R) Projects.** The COJA identifies each agencies funding obligations for R&R projects. In addition, the COJA identifies Lincoln's obligation to

330

cover the amount of R&R funding needed from the opening of the Lincoln treatment plant in 2004 until 2015. Costs of R&R Projects are allocated as follows:

- i. Routine Repair is solely allocated to Lincoln;
- ii. R&R Projects for the Lincoln plant and Lincoln pipelines downstream of the Junction Structure are funded based on a formula in the COJA that is keyed to the EDUs of connected customers for each party and Lincoln's past R&R obligation.
- c. Funding Expansion Projects. Each party is solely responsible for setting and collecting the actual connection fees for its own customers, which must cover at least the applicable connection fee charges shown in the Connection Fee Report attached to the COJA. Costs of Expansion Projects are proportionately allocated to the parties based on the amount of additional capacity each receives from the project.

5. Major Risks and Mitigating Provisions

a. Project Delays. The COJA addresses the risk of delay through the following provisions:

- i. Project Schedule. Lincoln will be responsible to meet certain key milestones stated in the COJA by the required dates, as may be adjusted for County-responsible delays.
- ii. Recovery Plans. Lincoln will notify County within 5 days of delays, then submit a recovery plan for County's approval. To the extent there is a delay caused by County's failure to perform, and Lincoln has provided the required notice, then Lincoln will be entitled to an extension of the applicable Project Completion Dates and potentially of the Capital Charge, which will be Lincoln's sole remedy for County's delays.
- iii. Delay Damages. County waives all damages against Lincoln for Lincoln-responsible project delays except for the following items that Lincoln is responsible for:
 - (1) Regulatory fines/penalties after the Treatment Completion Date (8/31/15) due to noncompliance of County's SMD 1 wastewater;
 - (2) The interest accrued on the SRF loan between the Project Final Completion Date (3/31/16) and the date when Project Final Completion actually occurs;
 - (3) Additional costs incurred by County for its construction-related consultants and outside advisors for the longer project; and
 - (4) The difference between (1) the additional costs paid by County in continuing to operate SMD 1 after the Treatment Completion Date and (2) the Operations Charge County would have paid during that period.

b. Cost Overruns. Regarding the risk of cost overruns, note the following COJA provisions:

- i. Oversizing Contingency. Lincoln has put up their desired Oversizing Payment as contingency for the Project, which gives them some "skin in the game." In addition to the conventional uses of contingency, the Construction Contingency and Oversizing Contingency will be used on a first dollar basis for Differing Site Conditions.
- ii. Monthly County Review. County reviews Lincoln's payment applications monthly and can dispute charges that are not reimbursable as Capital Costs.
- iii. Independent Auditor. The COJA requires an Independent Auditor to audit the Capital Costs, with quarterly "spot" audits and annual complete audits.
- iv. Termination. For worst case scenarios, County may terminate the COJA. Termination requires a determination of the Board that Project is impracticable or no longer in County's best interests. County would still need to pay amounts due prior to termination.

c. Third Party Claims

i. Insurance. The COJA has insurance requirements for Lincoln, County and Lincoln's designers & contractors to protect against certain third party claims.

ii. Indemnity. Per COJA terms, Lincoln is required to defend and indemnify County from claims and damages arising out of the acts or omissions of Lincoln and those for whom it is responsible, provided Lincoln is not required to indemnify anyone to the extent of that person's own active negligence. COJA also provides special Lincoln indemnities for contractor claims, prevailing wage claims and developer claims. County will defend and indemnify Lincoln from claims and damages arising out of County's active negligence on the Project, but not for Lincoln's own active negligence.

iii. Pass-through Requirements to Contractors. COJA requires Lincoln to put certain protective provisions in its Project contracts, including indemnities and insurance.

d. Failure to Perform

i. Default. If Lincoln fails to timely cure a Material Default, then COJA provides County with these potential remedies, without limitation: (1) County taking over the project and charging Lincoln with those costs allowed under COJA; or (2) obtaining a judicial order for specific performance of the COJA.

ii. Dispute Resolution. COJA provides for an escalating dispute resolution process that starts with informal efforts by the Authorized Representatives, followed by a meeting of Senior Executives, the possibility of having an Independent Expert provide a recommended solution, and then mediation. If a dispute is not resolved after mediation, then Parties are free to litigate. For critical path issues, low dollar issues and disputes over County withholding, the COJA has an expedited resolution process involving a quick hearing before a Project Neutral, whose decision is only binding until Project Final Completion.

e. Future Treatment Capacity

i. Claiming Uncommitted Capacity. For the 1st year after Treatment Substantial Completion, Lincoln will reserve an additional 0.4 MDG average dry weather flow of capacity for County to purchase at the connection fees specified in the COJA. After that, unreserved capacity is available on a first-come, first-served basis.

ii. Expansion Projects. Lincoln agrees to perform Expansion Projects requested by County, with County's collaboration in planning for it. County may undertake an expansion project at County's sole cost except as otherwise provided in COJA if Lincoln fails to timely undertake an Expansion Project reasonably requested by County or enter into an agreement with County for the project. Added capacity built for County is reserved for County exclusively.

6. Governance. Each party will designate an Authorized Representative to make decisions under the COJA. Each Authorized Representative is responsible for obtaining any needed prior authorization from the BOS/City Council when applicable. The parties will work together through a Project Coordination Team (PCT). Lincoln operates the Project during the first 5 years after completion, subject to certain rights of County. After initial 5 years, Lincoln continues to operate the Project, subject to certain rights of County, and subject further to oversight by an "Oversight Committee" consisting of two members of each Party's Board or Council, with certain listed Major Decisions requiring approval of both the BOS and City Council.

PLACER COUNTY

Facility Service to do journal to transfer cash

BUDGET REVISION

POST DATE:

DEPT NO.	DOC TYPE	Total \$ Amount	TOTAL LINES
12 BR		199,000,000.00	5

☒ Cash Transfer Required

Fund 503 Subfund 001

☒ Reserve Cancellation Required

Fund 503 Subfund 001 \$1m

☐ Establish Reserve Required

☒ Auditor-Controller

☐ County Executive

☐ Board of Supervisors

PAS DOCUMENT NO.

ESTIMATED REVENUE ADJUSTMENT

ESTIMATED REVENUE ADJUSTMENT												APPROPRIATION ADJUSTMENT											
DEPT NO.	I/C	Rev	Fund	Sub Fund	OCA	PCA	OBJ 3	PROJ.	PROJ. DTL	AMOUNT	DEPT NO.	I/C	Rev	Fund	Sub Fund	OCA	PCA	OBJ 3	PROJ.	PROJ. DTL	AMOUNT		
12	006		503	001	990726	90726	8953			39,000,000.00	12	014		503	001	990726	90726	3778			40,000,000.00		
12	006		140		991078	04828	8990			40,000,000.00	12	014		140		991078	04828	4151			40,000,000.00		
											12	034		140		991078	04828	4151	704828	010000	40,000,000.00		
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REASON FOR REVISION: TO INCREASE APPROPRIATIONS AND OFF-SETTING REVENUES IN THE CAPITAL PROJECTS FUND AND SEWER MAINTENANCE DISTRICT #1

FOR THE SMD #1 REGIONAL SEWER PROJECT.

Prepared by Valerie Bayne Ext 6803
Department Head
Board of Supervisors

Date: 9/24/13

Page:

Budget Revision # FOR INDIVIDUAL DEPT USE

CAPITAL CHARGE BREAKDOWN BASED ON CONSTRUCTION BIDS

CONSTRUCTION COSTS	
CONSTRUCTION	39,564,063
INFLATION ALLOWANCE (2%)	1,020,000
CAPITAL CONTINGENCY	9,850,249
SUBTOTAL - CONSTRUCTION COSTS	50,434,312
DESIGN/ENVIRONMENTAL/CONST. MGMT.	15,698,350
OVERSIZING CONTINGENCY	7,070,338
CAPITAL CHARGE	73,203,000

334



June 24, 2013

City of Auburn
Bernie Schroeder
Director of Public Works
1225 Lincoln Way
Auburn, CA 95603

RE: CITY OF AUBURN REGIONAL SEWER DEAL POINTS

Dear Bernie:

We have received and reviewed the City of Auburn's Common Pipeline Deal Points that were submitted to the Placer County (County) Board of Supervisors and Lincoln City (Lincoln) Council via your letter dated April 25, 2013. We appreciate Auburn's continued interest in participating in the Regional Project.

As you may be aware, the Environmental Impact Report was recently certified by the Lincoln City Council and the final design of the Regional Sewer Project (Project) is nearing completion. We are scheduled to solicit construction bids for the Project in July and August with bid openings in early September. Once actual construction costs are known, we will provide you with cost information that should allow Auburn to make a decision on participating in the upsizing of the common section of pipeline.

Following the bid opening process, the Construction and Initial Operations Agreement (CIOA) between Lincoln and the County will be presented to the respective legislative bodies for approval. In addition to laying out the framework for construction of the Project, the CIOA will include provisions for developing a long term governance structure. This governance structure could be in the form of a Joint Powers Authority as requested in Auburn's Deal Points or similar structure that provides each jurisdiction with local control, and could include provisions addressing the remainder of Auburn's Deal Points. We are currently working through these issues at our weekly PCT meetings and would welcome your participation.

Please let either of us know if you have any comments or questions, or if there is any additional information we can provide.

Sincerely,

Bill Zimmerman, P.E.
Deputy Director of Facility Services
Placer County

Mark Miller
Public Services Director
City of Lincoln

BZ:lm

cc: County Executive Office
Board of Supervisors
Lincoln City Manager
Lincoln City Council

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